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SUBJECT: S/WCI AMB WILLIAMSON'S MEETING WITH FRENCH MFA
LEGAL ADVISOR BELLIARD

Classified By: POLITICAL MINISTER COUNSELOR JOSIAH ROSENBLATT FOR REASON 1.4 (b) AND (d)

1. (C) SUMMARY: French MFA legal advisor Edwige Belliard met with S/WCI Ambassador Williamson on January 7 to discuss the possible transfer of releasable Guantanamo detainees to EU countries, the debate within the ICC Assembly of States Parties (ASP) on the Crime of Aggression, and the future outlook for international war crimes tribunals. Belliard showed a keen interest in the future of Guantanamo, but offered no constructive assistance, stressing that the issue remains politically sensitive in EU capitals. Williamson said the United States is open to more active participation in the debate on the Crime of Aggression but will look to France and the UK to provide recommendations on how U.S. intervention can positively affect the outcome. While the United States is not likely to join the ASP, Williamson told Belliard that the United States wants to maintain a reasonable relationship with the ICC. Belliard and Williamson agreed that keeping the number of international courts and their costs to a minimum was a priority for both the United States and France. Williamson suggested that making the Special Court for Sierra Leone a more effective body can make it a model for future courts. END SUMMARY

GUANTANAMO DETAINEES

2. (C) S/WCI Ambassador Williamson provided Belliard with a comprehensive briefing on the legal status of the Guantanamo detention facility and U.S. efforts to repatriate releasable detainees (those who pose a low-level threat and are judged releasable by the Department of Defense) to their countries of citizenship/origin or to third countries when humanitarian concerns exist or they are refused by the former. Williamson explained that some EU governments have expressed interest in welcoming third-country detainees, but are concerned about potential criticism from other EU states and would not likely act except simultaneously with other EU countries. A commitment by France to either accept detainees, or support other EU nations' willingness to host detainees, would be appreciated by Washington, Williamson stressed, and could be a deciding factor for several EU capitals. He added that the international human rights community, including ICRC, UNHRC, and OHCHR, would support the initiative and recognize the gesture as a humanitarian effort.

3. (C) Belliard noted that the Guantanamo facility remained politically sensitive for even the smallest, newest members of the European Union. She added, that for France, there are also potential legal repercussions to consider. France is a member of the Convention Against Torture and has a universal competence law, Belliard explained. Belliard speculated that the presence of former Guantanamo detainees on French soil would fuel efforts by NGOs or individuals to bring charges of torture in French courts against the United States or its

representatives. Belliard used the example of war crimes charges filed in November 2007 against former Secretary of Defense Donald Rumsfeld during a personal visit to Paris. (Note: The case against Rumsfeld was later dismissed based on an MFA legal interpretation, presumably authored in part by Belliard, that extended head-of-state immunities to ministers or their equivalents.) The United States is mindful of the potential legal implications, Williamson responded, but believes they can be mitigated. Williamson said that France could be tremendously influential with other EU states and that the United States hopes that the GOF will either accept detainees or support other EU states who are willing to do so.

14. (C) The French also inquired as to the status of former Guantanamo detainee and Australian citizen David Hicks. Williamson explained that Hicks pleaded guilty to lesser charges during his military commission hearing, which began at Guantanamo. He was subsequently transferred to Australia to serve his sentence, but was judged by Australian authorities to have already served sufficient time at Guantanamo to cover the sentence and was released.

ICC and the CRIME OF AGGRESSION

15. (C) Williamson explained that the United States fully shares France's concerns about the Crime of Aggression Amendment being considered by the Assembly of States Parties (ASP), and would consider bilateral interventions with appropriate countries if France and the UK judged such efforts to be helpful. Because of the general anti-American sentiment in the ICC, Williamson stressed that we do not want to take action that could be counterproductive to our shared objective. Belliard noted that she understands USG

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reluctance to get involved in the general discussions, but is concerned about the political implications the adoption of the Crime of Aggression text could ultimately have on the equilibrium of the UN pillars -- something that affects the entire international community, and particularly members of the UN Security Council (UNSC). France, she said, is beginning to feel isolated due to the hostility against the UNSC and is unsure if a satisfactory result is possible. Belliard encouraged the United States to consider targeted demarches, either bilaterally, or with P-3 or P-5 countries. Williamson agreed to talk to the State Department's Legal Advisor and said the United States remains open to French and UK recommendations on the best way forward.

16. (C) Christian Bernier from the MFA's International Organizations Bureau noted that France and the UK need to use 2008 to more aggressively lobby the ASP. Bernier noted that many delegations have not yet engaged in the debate at a political level, and that a number of states, including EU capitals, were maintaining hard-line stances. Higher level political pressure, he argued, might therefore affect some states' positions and lead to compromise. Bernier noted that the process of amendment was also likely to be controversial.

THE ICC AND OTHER WAR CRIMES TRIBUNALS

17. (C) Williamson stressed that a reasonable relationship between the United States and the Court is useful, in spite of the reality that the United States is unlikely to join the ICC for the foreseeable future. The ICC can serve as an appropriate forum in some instances, Williamson added. Belliard said that France wants to resist creating more international courts like the ICTY due to increasing costs; the ICC, she argued, can assist in keeping expenditures to a minimum by offering its facilities to other courts, such as a prison for the Lebanon court, or other appropriate services for other courts' residuals (ICTY and ICTR for example). Williamson said the United States will consider proposals to use ICC facilities, along the lines of the

arrangement for the Charles Taylor trial, if they represent overall cost-savings, such as potentially using the ICC prison for the Lebanon court if the Dutch and other stakeholders agree. The United States, Williamson stressed, also favors keeping budgets to a minimum and is encouraging more hybrid courts. As a result, the United States is highly committed to making the Special Court for Sierra Leone model work, despite the many difficulties thus far encountered.

18. (U) This cable has been cleared by S/WCI Ambassador Williamson.

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